



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,083	12/31/2003	Keith Rowley	700798.00004	1880

26710 7590 07/03/2006

QUARLES & BRADY LLP
411 E. WISCONSIN AVENUE
SUITE 2040
MILWAUKEE, WI 53202-4497

EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,083

Applicant(s)

ROWLEY ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
4a) Of the above claim(s) 15-41 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/Q8)
Paper No(s)/Mail Date 10/20/04, 10/8/04, 8/27/04, 7/22/04, 7/1/04

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group I in the reply filed on 4/18/06 is acknowledged. The traversal is on the ground(s) that it is not a serious burden on the Examiner to search all claims. This is not found persuasive because it is a serious burden on the Examiner because each group belongs to a different search string as stated on the restriction requirement mailed 3/16/06. According to MPEP chapter 800, Applicant is entitled to one invention per application and not multiple inventions per application, hence, restriction is established for such multiple inventions per application. The requirement is still deemed proper and is therefore made FINAL.

Since Applicant has elected group I, claims 1-38, this group contains claims directed to the following patentably distinct species:

Species I: method for modifying a plant or plant part.

Species II: method for improving the quality of a plant part.

Species III: method for retarding senescence in a plant part.

Species IV: method for increasing the size, weight or both of a plant part.

Species V: method for stimulating the growth of a plant or plant part.

Species VI: method for improving the aesthetic attributes of a plant or plant part.

Species VII: method for increasing fruit set on a plant.

Species VIII: method for reducing fruit drop from a plant.

Species IX: method for protecting a plant or plant part.

Art Unit: 3643

The species are independent or distinct because they are different method of modifying plant or plant part. For example, species II calls for changing quality such as turgidity, color, flavor and fruit cracking, which all other species do not require or lack of such features. Species III calls for retarding by storage or shelf life extension of the plant part, which all other species do not require or lack of such features. Species IV calls for increasing size and/or weight of plant part, which all other species do not require or lack of such features. Species V calls for stimulating the plant cuttings or tubers or turf grass, which all other species do not require or lack of such features. Species VI calls for improving the plant's aesthetic attributes, which all other species do not require or lack of such features. Species VII calls for increasing fruit set, which all other species do not require or lack of such features. Species VIII calls for reducing fruit drop, which all other species do not require or lack of such features. And finally, species IX calls for protecting by treating before stress situation, stress being an abiotic stress, chilling, freezing, etc.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Art Unit: 3643

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

During a telephone conversation with Zhibin Ren on 6/14/06 a provisional election was made without traverse to prosecute the invention of species I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-41 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-4,6,7,9** are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts et al. (5725630).

For claims 1-4,6, Roberts et al. teach a method for modifying a plant or plant part such as seeds or young plants comprising the step of treating the plant or plant part with a composition comprising a modified lecithin (col. 4, line 67 and col. 5, line 17) in an amount sufficient to change health, growth or life cycle of the plant or plant part. Roberts

Art Unit: 3643

et al. further teach the lecithin being soy (col. 5, line 17) or hydroxylated (col. 4, line 67) lecithin.

For claim 7, Roberts et al. teach roots and leaves of young plant.

For claim 9, Roberts et al. teach treating the young plants, thus, young plants are not harvested, therefore, treating before it is harvested from the plant.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-4,6-8,10-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Staden (NPL "Bulletin of the Sprenger Institute "Brown" in Golden Delicious on form PTO-1449) in view of Roberts et al. (as above).

For claims 1-4,6, Staden teaches a method for modifying a plant or plant part such as an apple fruit comprising the step of treating the plant or plant part with a composition comprising a lecithin (1st paragraph, line 4) in an amount sufficient to change health, growth or life cycle of the plant or plant part. However, Staden is silent about modified lecithin such as soy or hydroxylated lecithin. As mentioned above, Roberts et al. teach modified lecithin such as soy or hydroxylated lecithin (col. 4, line 67 & col. 5, line 17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ modified lecithin such as soy or hydroxylated

lecithin as taught by Roberts et al. as the preferred lecithin in the method of Staden in order to create a more potent composition.

For claims 7 & 8, Staden as modified by Roberts et al. (emphasis on Staden) teaches apple, which is a fruit.

For claim 10, Staden as modified by Roberts et al. (emphasis on Staden) teaches wherein the plant part is exposed to the composition after it is harvested from the plant (see 2nd paragraph).

For claim 11, Staden as modified by Roberts et al. (emphasis on Staden) teaches wherein treating the plant or plant part with the composition is achieved through dipping the plant or plant part into the composition.

For claims 12-14, Staden as modified by Roberts et al. is silent about wherein the modified lecithin concentration in the composition is from about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ modified lecithin concentration of about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm in the composition of Staden as modified by Roberts et al., since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (more potent) is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

6. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Staden (as above) or Roberts et al. (as above).

Art Unit: 3643

Staden or Roberts et al. is/are silent about the lecithin being acetylated lecithin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ acetylated lecithin as the preferred lecithin in the composition of Staden or Roberts et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (more potency) as a matter of obvious choice. In re Leshin, 125 USPQ 416.

7. **Claim 12-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al. (as above).

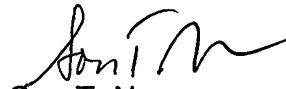
Roberts et al. are silent about wherein the modified lecithin concentration in the composition is from about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ modified lecithin concentration of about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm in the composition of Roberts et al., since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (more potent) is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

Art Unit: 3643

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn